

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Complainant,

v.

QUALITY CHEVROLET- LLC,
a Tennessee limited liability corporation,
doing business as BRYAN CHEVROLET-
CHRYSLER-PLYMOUTH-DODGE-JEEP
and doing business as BRYAN KIA,
and THOMPSON CHRYSLER-DODGE-
JEEP, LLC, a Tennessee limited liability
corporation, doing business as MIKE
THOMPSON CHRYSLER-DODGE-JEEP,
and doing business as THOMPSON KIA,

Defendants.

COMPLAINT

This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1) and 47-18-114, at the request of David A. McCollum, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"). The Division has reason to believe that the Defendants named herein have violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, and that this action is in the public interest.

I. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County because it is a county in which Defendants are required to be licensed to sell motor vehicles with the Tennessee Motor Vehicle Commission. See Tenn. Code Ann. § 47-18-108(a)(3). Defendants have waived their right to the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

II. PARTIES

2. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General and Reporter, Paul G. Summers, at the request of the Division. (See Exhibit A, Affidavit and Verification of David A. McCollum, the Director of the Division of Consumer Affairs).

3. Defendant Quality Chevrolet-LLC is a Tennessee limited liability corporation in the business of offering motor vehicles for sale to the general public of Tennessee. Defendant Quality Chevrolet-LLC also does business under the name of Bryan Chevrolet-Chrysler-Plymouth-Dodge-Jeep and Bryan KIA. Its principal place of business is located on Decherd Boulevard in Winchester, Tennessee.

4. Defendant Thompson Chrysler-Dodge-Jeep, LLC, a Tennessee limited liability corporation in the business of offering motor vehicles for sale to the general public of Tennessee. Defendant Thompson Chrysler-Dodge-Jeep, LLC also does business under the name of Mike Thompson Chrysler-Dodge-Jeep and Thompson KIA. Its principal place of business is located on Decherd Boulevard in Winchester, Tennessee.

5. The Defendants described in paragraph 3-4 shall be collectively referred to as "Defendants" or "Bryan Chevrolet".

III. FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

6. For several years, the Defendants have operated motor vehicle dealerships in Winchester, Tennessee.

7. From approximately July of 1998 to December of 1999, during the sale of motor vehicles to consumers, about 500 consumers were charged approximately \$300.00 each for a product referred to as "Secure Etch". These consumers represent approximately 50-60% of consumers purchasing vehicles from the Defendants. This product is promoted to consumers as providing prevention against theft of their vehicle by etching numbers on each window of a vehicle. It also includes a warranty or guarantee to pay a \$5,000.00 benefit if the consumer's car valued in excess of \$30,000 is stolen or a \$2,500 benefit if a consumer's car is valued at less than \$30,000 is stolen within the first 3 years of ownership.

8. Some of the about 500 consumers who were charged for the "Secure Etch" product did not request or understand that the Defendants were charging them for the "Secure Etch" product. For example, in some cases, the bill of sale or contract did not list the "Secure Etch" product and the cost of the product was merely added to the cost of the vehicle. In still other cases, the "Secure Etch" product was not placed on the vehicle, even though the consumer paid for the product.
9. Beginning around November of 1998, Defendants began selling a "customer service package" or "Coupon Package" to consumers in connection with the sale of their vehicles. Consumers were generally charged approximately \$499.50 for the "customer service package". Approximately 950 consumers received the "customer service package".
10. The "customer service package" was promoted as containing items worth over \$650.00. However, Defendants did not have appropriate substantiation for that claim.
11. Some consumers were not clearly and conspicuously informed that they were paying for a "customer service package" in the total cost of their vehicle. For example, in some cases, the Defendant referred to the "customer service fee" as a "processing fee".
12. In other cases, Defendants advertised vehicles to consumers at certain prices, but later added "charges" or "fees" above and beyond tax, title and license to the price of the vehicle. For example, the "customer service fee", "processing fee" and "Secure Etch" product were often added to the cost of a vehicle that had been advertised at a specific price.
13. Some of Defendants' salespersons also failed to properly complete conditional delivery forms on vehicles sold to consumers.
14. In a few cases, Defendants increased the price of a vehicle after an order of purchase or contract had been accepted by the dealer.
15. Defendant offered and paid to consumers a "\$50.00 REWARD", "chain referral fee" or "referral fees" to non-licensed motor vehicle sales persons as an inducement to purchase a vehicle. In some cases, this "reward", "chain referral" or "referral fee" was offered to consumers before they purchased a vehicle.
16. Defendant offered to the public a "\$25.00 TEST DRIVE CERTIFICATE". Those certificates required the consumer to purchase the vehicle test driven before the consumer was eligible to receive the \$25.00. It was also not possible to receive the \$25.00 without purchasing a vehicle from the Defendants.
17. Defendants permitted unlicensed sales persons to offer for sale to the public motor vehicles.
18. Defendants commingled the inventories of more than one dealership's vehicles onto their dealership's property.

19. Defendants applied for more drive out tags for vehicles than permitted by the Tennessee Department of Safety. In some cases, Defendants obtained as many as 6 drive out tags for one vehicle. Defendants are only permitted to obtain 2 drive out tags per vehicle. For example, Joshua Clark was issued 6 drive out tags, Eugene Walter was issued 3 drive out tags, Margaret Gilliam was issued 4 drive out tags, Derick Southhall was issued 5 drive out tags, Loretta Whalen was issued 6 drive out tags, Edward and Debbie Brandon were issued 4 drive out tags and Terry Jordan was issued 3 drive out tags.

20. The operation of a vehicle dealership, sale of vehicles and advertisement of motor vehicles for sale by Defendants, as alleged herein, constitutes "trade", "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (10) and (11).

IV. VIOLATIONS OF THE LAW

21. Defendants' practices of charging consumers for the "Secure Etch" product and (a) in some cases not informing the consumer, (b) not placing the "Secure Etch" product on the vehicle, or (c) failing to provide the entitlement warranty papers, are unfair or deceptive acts or practices in violation of the Tennessee Consumer Protection Act of 1977 and other laws. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(9), (b)(12), (b)(14), (b)(19) and (b)(27) and Tenn. Code Ann. § 55-17-114(b)(1)(A), which prohibit (in pertinent part):

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(b)(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have...;

(b)(9) Advertising goods with intent not to sell them as advertised;

(b)(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(b)(14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

(b)(19) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

55-17-114(b)(1)(A) Has required the purchaser of a motor vehicle as a condition of sale and delivery thereof to also purchase special features, appliances, accessories or equipment not desired or requested by the purchaser, unless such features, appliances, accessories or equipment are of the type which are ordinarily installed on the vehicle by the manufacturer or distributor when the vehicle is received or acquired by the dealer.

22. During Defendants' sale of vehicles to consumers, Defendants' practice of including a "customer service package" fee without a consumer's knowledge or under a misleading heading such as "processing fee" is an unfair or deceptive acts or practice. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(9), (b)(12), (b)(14), (b)(19) and (b)(27) which prohibit (in pertinent part):

(a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(b)(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have...;

(b)(9) Advertising goods with intent not to sell them as advertised;

(b)(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(b)(14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

(b)(19) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

23. Defendants' offering a \$25.00 test drive coupon to consumers when the coupon requires the purchase of a vehicle to obtain the \$25.00 is an unfair or deceptive acts or practice in violation of the Tennessee Consumer Protection Act of 1977. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(5) and Tenn. Code Ann. §§ 47-18-120(c)(1)(I), (c)(2)(C), and (d)(1) which prohibit (in pertinent part):

(a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practice...

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part.

(b)(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have...;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

(c) In addition to and without limiting the prohibitions contained in § 47-18-104, the following unfair or deceptive acts or practices are declared unlawful and in violation of this part:

(c)(1) In an initial offer, the offeror is in violation of this part if the offeror:

(c)(1)(I) Fails to give a recipient an approximate total of all costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or services offered;

(c)(2) Either in an initial offer or, at a minimum, before an offer can be accepted, the offeror is in violation of this part if the offeror fails to clearly and conspicuously state verbally, or in writing, and upon request, in writing:

(c)(2)(C) The approximate total of costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered, including, but not limited to, handling, shipping, delivery, freight, postage or processing fees, charges or other additional costs for the receipt or use of the prize or travel service, or product or service offered. This subdivision shall not be construed to require that foreign tax rates be included;

(d) In addition to, and without limiting, the foregoing provisions:

(d)(1) It is unlawful to require the consumer or person to incur any monetary obligation, excluding nominal postage costs, in order to determine which, if any, prize or travel service the consumer or person is offered or will receive, or to continue to remain eligible to receive any prize or travel service;

24. During Defendants' offering of a "50.00 REWARD" to consumers who refer another consumer to the Defendants' dealership prior to the consumer purchasing a vehicle is an unfair or deceptive act or practice. This practice also violates Tennessee law which prohibits the payment of funds to a non-licensed motor vehicle sales person in connection with the sale of a vehicle. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and Tenn. Code Ann. § 55-17-110(e) which prohibit (in pertinent part):

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practice...

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part;

(b)(18) Using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses

the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and, in connection with the purchase, receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of compensation or consideration is contingent upon the occurrence of an event subsequent to the time that buyer purchases the merchandise or goods; and

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

55-17-110(e) No licensed hereunder shall give, pay or in any manner compensate any other person for services rendered as a motor vehicle salesperson without first engaging or employing such person in the capacity of a motor vehicle salesperson.

25. Defendants' practice of obtaining more than two drive out tags for vehicles sold at its dealership is an unfair or deceptive act or practice. This practice also violates Department of Safety rules and regulations. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b) and (b)(27) which prohibit (in pertinent part):

(a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

26. Defendants' practice of advertising vehicles at certain prices but later adding charges or fees above and beyond tax, title and license to the price of a vehicle, is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977. Such unfair or deceptive acts specifically

violate Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(9), (b)(12), (b)(14) and (b)(27) and Motor Vehicle Commission Rule 0960-1.12(4)(a) which prohibit (in pertinent part):

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b)(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have...;

(b)(9) Advertising goods with intent not to sell them as advertised;

(b)(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(b)(14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

Rule 0906-1-.12((4) *Price advertising.*

(a) If the price of a motor vehicle is advertised, the advertised price:

1. Must include all costs, and fees payable by the purchaser of the vehicle advertised (excluding the cost of optional equipment selected by the

purchaser), *except* State and local taxes, tags, registration and title fees. . .

27. Defendants' practice of salespersons improperly completing conditional delivery forms on vehicles provided to consumers, which is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977 and other state law. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a) and (b)(27) which prohibit (in pertinent part):

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

28. Defendants' practice of increasing the price of a vehicle after an order of purchase or contract has been accepted by the dealer is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977 and other state law. Such unfair or deceptive acts and practices specifically violate Tenn. Code Ann. §§ 47-18-104(a), (b)(5), (b)(9), (b)(12)(b)(14), (b)(27) and Tenn. Code Ann. § 55-17-114(11):

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practice...

(b)(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have...;

(b)(9) Advertising goods with intent not to sell them as advertised;

(b)(12) Representing that a consumer transaction confers or involves rights,

remedies or obligations that it does not have or involve or which are prohibited by law;

(b)(14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

55-17-114 (11) Increased prices of motor vehicles which the dealer has ordered but not delivered for private retail customers prior to the dealer 's receipt of the written official price increase notification.

30. Defendants' practice of permitting unlicensed salespersons to offer motor vehicles for sale to the public is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977 and other state law. Specifically, such unfair or deceptive acts or practices violate Tenn. Code Ann. §§ 47-18-104(a) and (b)(27) and Tenn. Code Ann. §§ 55-17-109(a)(1) and 55-17-110(c) which prohibit (in pertinent part):

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person.

55-17-109 (a)(1) It is unlawful for any person to engage in business as, or serve in the capacity of , or act as a . . . motor vehicle salesperson . . . without first obtaining a license .

..

55-17-110 (c) No motor vehicle dealer shall hire any person for the purpose of selling motor vehicles or for acting in the capacity of a motor vehicle salesperson without first determining that the person is duly licensed as a motor vehicle salesperson.

55-17-114 (G) Employs any person who has not been licensed as a salesperson . . .

55-17-114 (15) Employed any person as a representative who has not been licensed . . .

31. Defendants' practice of commingling the inventories of more than one dealership's vehicles onto their dealership's property is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977 and other state law. Such unfair or deceptive acts or practices specifically violate Tenn. Code Ann. 47-18-104(a) and (b)(27) which prohibit in pertinent part:

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person.

32. Defendants' practice of representing that the customer service package is worth over \$650.00 when Defendants do not have appropriate substantiation for that claim is an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act of 1977. Such unfair or deceptive acts or practices specifically violate Tenn. Code Ann. 47-18-104(a), (b)(5), (b)(7) and (b)(27) which prohibit in pertinent part:

47-18-104 (a) Unfair or deceptive acts or practices affecting the conduct of trade or commerce constitute unlawful acts or practices...

(b)(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have...;

(b)(7) Representing that goods or services are of a particular standard, quality or grade . . .

(b)(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(b)(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.

(2) That process issue and be served upon Defendants requiring them to appear and answer this Complaint.

(3) That this Court adjudge and decree that Defendants have engaged in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act of 1977 and other state laws and regulations.

(4) That this Court enjoin Defendants from engaging in the aforesaid acts or practices, which are violative of the Tennessee Consumer Protection Act of 1977 and other state laws, regulations and rules.

(5) That this Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants actions, including attorneys' fees, as provided by Tenn. Code Ann. § 47-18-108(b).

(6) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses suffered by reason of the alleged violations of the Tennessee Consumer Protection Act.

(7) That this Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. §§ 47-18-108(b).

(8) That all costs in this cause be taxed against Defendants.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.